

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**PRINCIPAL BENCH****NEW DELHI****COMPANY APPEAL (AT)(INS) NO.183 OF 2024****&****IA No.2699 of 2024**

(Arising out of judgement and order dated 09.01.2024 passed by National Company Law Tribunal, Mumbai in IA No.68/2021 in CP(IB)1874/MB/2019).

In the matter of:

M/s Essar (India) Ltd,
Through: Ms Palak Jain
101, 1st Floor,
Western Edge I
Off. Western Express Highway,
Borivali (East)
Mumbai 400066

Appellant

Vs

1. Prabhat Technologies (India) Ltd,
Unit No.402, Western Edge I,
Kanakia Spaces, Western Espress Highway,
Borivali (East)
Mumbai 400066
Th: Liquidator

2. State Bank of India,
Tulsani Chambers
Free Press Journal Marg,
Mumbai 400021

3. Mr Rajendra Karanmal Bhuta,
Erstwhile IRP
Of Prabhat Technologies (India) Ltd
1207, Yogi Paradise, Yogi Nagar,
Borivali (West) Mumbai 400092

Respondent

For Appellant: Mr Nakul Dewan, Sr Advocate with Mr. Abhinav Agrawal, Mr Piyush Bhardwaj, Advocates.

For Respondent: Mr. Ayush J Rajani, Ms Khushboo Shah Rajani, Advocates for R1.

Mr Abhijeet Sinha, Sr Advocate with Ms Shivani Sinha, Ms Meera Mvrali, Advocates for R2.

Ms Parul Shukla, Mr Saday Mondol, Advocates for R3/RP.
Mr Rajender K Bhuta, IRP

With

COMPANY APPEAL (AT)(INS) NO.446 OF 2024

&

IA No.1539 of 2024

In the matter of:

1. Mr. Vishwamani Tiwari
Residing at 603, 6th floor,
C-wing,
Mangalam Apartment Co-op Hsg, Soc Ltd,
Thakur Complex,
S No. 753,
Village Poisar,
Kandivali (East),
Mumbai- 400101.
2. Mrs. Prabha Vishwamani Tiwari
Residing at 603,
6th floor, C-wing,
Mangalam Apartment Co-op Hsg, Soc Ltd,
Thakur Complex.
S No. 753,
Village Poisar,
Kandivali (East),
Mumbai- 400101.
3. Mr. Parag Made
Residing at B-601/602,
Akshardham Complex,
Goraswadi Corner,
SV Road,
Near Milape Cinema,
Malad West
Mumbai-400064.

Appellants

VERSUS

1. Prabhat Technologies (India) Limited
Unit No. 402,
Western Edge I,
Kanakia Spaces,

Western Express Highway,
 Borivali (East),
 Mumbai- 400066
 (through its Liquidator
 Mr. Shailash Desai)

2. State Bank of India
 Through Manager,
 Tulsani Chambers
 Free Press Journal Marg
 Mumbai- 400021
3. Mr. Rajendra Karanmal Bhuta.
 Erstwhile Interim Resolution Professional of
 Prabhat Technologies (India) Limited
 1207, Yogi Paradise,
 Yogi Nagar,
 Borivali (West),
 Mumbai 400092

... Respondents

For Appellant: Mr P.B. Suresh, Sr Advocate with Ms Shubhangi Pandey, Advocate.

For Respondent: Mr. Ayush J Rajani, Ms Khushboo Shah Rajani, Advocates for R1.

Mr Abhijeet Sinha, Sr Advocate with Ms Shivani Sinha, Ms Meera Mvrali, Advocates for R2.

Ms Parul Shukla, Mr Saday Mondol, Advocates for R3/RP.

Mr Rajender K Bhuta, IRP

JUDGEMENT

JUSTICE YOGESH KHANNA, MEMBER (JUDICIAL)

This is an appeal against an impugned order dated 09.01.2024 passed by Ld.National Company Law Tribunal, Mumbai in IA No.68/2021 in CP(IB)1874/MB/2019).

2. It is the submission of the learned counsel for the appellant the Committee of Creditors had approved the subject resolution plan dated 23.10.2020 in the 9th CoC Meeting with an overwhelming majority of 98.15%.

on 07.11.2020. However, vide the Impugned Order dated 09.01.2024 passed by the Ld.National Company Law Tribunal, Mumbai Bench-I ('NCLT'), the resolution plan submitted by the Appellants was rejected on sole basis of the Respondent No. 2/State Bank of India claiming to have unilaterally withdrawn its consent to the plan. It is argued the Ld. NCLT, without there being an application under Section 33 (2) of the IB Code had directed the Corporate Debtor to be liquidated. Further the Ld. NCLT did not render any finding or observation on the *purported allegations of fraud* made by Respondent No. 2 against the Appellants in their objection application. Importantly the Ld. NCLT did not even issue notice to the Appellants giving them an opportunity to explain the frivolous one-sided allegations made by Respondent No. 2, to justify its unilateral withdrawal of consent made upon allegations of fraud and on an application by the Respondent No. 3 (the Insolvency Resolution Professional) filed under section 30(6) of the Insolvency and Bankruptcy Code, 2016 ('Code') seeking approval of Resolution Plan had rather directed 'Liquidation' of the Corporate Debtor.

3. The solitary basis of allegation of the purported fraud made by the Respondent No. 2/SBI is the Appellants did not have a clear title to one of the properties, i.e., *Flat No. 2402, Siddesh Apartment, Khattar Gully, CTS No. 2267 to 2270, Girgaon, Mumbai-400 004* ('Girgaon Property'), which was given as a source of fund for the resolution plan.

4. In terms of the subject resolution plan, the resolution value was Rs. 77,98,24,619/-. For demonstrating their capacity to raise the funds for the resolution plan, the Appellants had provided certain Source of Funds. Under

the Source of Funds, the Appellants had provided five immovable properties owned by the Appellants as a source for Rs. 20 crores. Out of these 5 properties, the Girgaon property, owned by Appellant No. 3/Parag Malde, was only one property, having a distress valuation of only Rs. 90 lacs, *viz.* 1.5% of the resolution value.

5. Admittedly, Appellant No. 3/Parag Malde had purchased the Girgaon property by way of a Registered Sale Deed dated 10.07.2014 (registered on 15.07.2014) from one, Shyamsundar Vyas and Madhu Shyamsundar Vyas ('vendors'), for a sale consideration of Rs. 69,40,000/-. Now since between 2019 to 2023, when Mr. Malde was suffering from life-threatening ailments of cancer, his vendor(s) fraudulently executed an Agreement to Sell dated 21.10.2020 of the same flat which they had already sold to appellant No.3. After being notified of such illegality, the appellant No.3 Mr. Malde had instituted a suit, *viz.* Suit No. 139/2024 against his erstwhile owners of the flat and such suit is pending adjudication before the City Civil Court, Mumbai. Furthermore, appellant No.3 had instituted criminal complaint against his vendors for this fraudulent act.

6. It is to be noted on 25.07.2014 the Appellant *vide* a Mortgage Deed dated 25.07.2014 had mortgaged the subject Girgaon property with a consortium of banks comprising of Respondent No. 2/State Bank of India, Union Bank of India and Bank of India, for a loan facility. The loan facility was extended by the consortium *after due diligence* and after *thorough title verification* of the subject property. Admittedly, since 2014, the subject Girgaon property has remained mortgaged with such consortium of banks

and regular title searches were being carried out by them. Even at the time of the approval of the subject Resolution Plan, the subject Girgaon property remained to be mortgaged with Respondent No. 2 Bank.

7. The CoC had approved the Appellants' Resolution Plan with an overwhelming majority of 98.15% voting which ended on 07.11.2020.. Accordingly, the CoC directed Respondent No. 3 (RP) to file an application under Section 30(6) of the IB Code for approval of such plan before the Ld. NCLT. On 07.11.2020 the Respondent No. 3/RP filed an application, viz. IA No. 68/2021 before the Ld. NCLT, Mumbai under Section 30(6) of the IB Code for approval of the Appellants' plan.

8. On 18.10.2023, 13th CoC Meeting dated 18.10.2023 was conveyed by the Respondent No. 3/RP at the instance of the Respondent No. 2/SBI to discuss the issue relating to the Girgaon property. In this meeting the Appellants had clarified they were not aware about the title dispute of Girgaon property and were taken by surprise themselves. Furthermore, to provide a compromise and resolve the situation the Appellants even offered to replace the Girgaon property as a source of fund and in the alternative offered a fixed deposit of Rs. 1,00,00,000/- to secure the value of the property, which was in fact valued at Rs. 90 lacs.

9. On 25.10.2023 upon finding out about the fraud, the Appellants had immediately filed a criminal complaint against the vendors, i.e., Mr Shyam Sundar Vyas and alleged proposed Vendee, i.e., Gajraj Rathod. Further as above on 12.12.2023, appellant No. 3 also filed a suit, viz. Suit No. 139/2024 against his vendors challenging the alleged fraudulent sale deed dated

21.10.2020. Respondent No. 2/SBI is also a party to this suit and is fully aware of the bonafides of the Appellants.

10. On 18.12.2023 despite the assurances provided by the Appellants to demonstrate their bonafide, the Respondent No. 2/SBI, for reasons best known to them, filed the subject objection application, proposing to unilaterally withdraw its consent to the Resolution Plan and sought directions to Respondent No. 3/RP to take appropriate steps for liquidation of the Corporate Debtor. Respondent No. 2/SBI appeared before Ld. NCLT on 23.11.2023 and made a statement that Union Bank of India and Bank of India is also supporting its withdrawal of consent. On 19.12.2023, the above statement was again repeated.

11. Accordingly, the Ld. NCLT *vide* Order dated 19.12.2023 had directed a “formal application” to be filed to bring on record the withdrawal of consent by all the three banks, i.e., Respondent No. 2/SBI, Union Bank of India and Bank of India. However, no such application was filed by Union Bank of India and Bank of India. Furthermore, no notice was issued to the Appellants (who were never parties before the Ld. NCLT) to explain one-sided allegations of fraud made by the Respondent No. 2/SBI. On 9.01.2024 merely on a statement made by Respondent No. 2/SBI, the Ld. NCLT had passed the Impugned Order dated 9.01.2024, not only rejecting the Appellants’ resolution plan, but also directed liquidation of the Corporate Debtor.

12. Heard.

13. Apparently, the decision of Respondent No. 2 defies commercial wisdom and probably for this reason no other financial creditor had supported its

position *qua* the withdrawal of consent. Admittedly the resolution plan offered a resolution value of Rs. 77.98 Cr whereas the Liquidation Value of the Corporate Debtor was Rs. 23.45 Cr as *per* the valuation report. Further the subject Girgaon property is valued at only Rs. 90 lacs, which was only 1.5% of the resolution value and the appellants had already offered to replace the said property and to file a fixed deposit receipt of Rs. 1 crore to justify its capacity to honour the resolution value. Therefore, it makes commercial sense to proceed with the resolution plan, rather than to liquidate the Corporate Debtor.

14. Moreso there appeared to be no justification for rejection of the Resolution Plan by the Ld. NCLT as the solitary basis of objecting to the plan by the Respondent No. 2/SBI was an alleged title dispute with respect to one of the five properties given by the Appellants as a source of fund. The facts, *prima facie*, does not suggest any intention to defraud the respondents as *admittedly* the Appellant had a registered sale deed to substantiate his title over the subject property. Can there be an allegation of malafide intent, especially when the subject property has been mortgaged with Respondent No. 2/SBI since 2014 itself and regular title search was taking place. Even the SBI was not aware of the alleged title dispute which has been fraudulently created by the erstwhile vendor(s) of the flat apparently purchased legally by Appellant No. 3.

15. We find the Impugned Order is a non-speaking order and even against principles of natural justice, as the aggrieved party, *viz* the Resolution Applicants, whose plan was rejected on account of an alleged fraud, was never

given an opportunity to explain its position. Further the impugned order does not give any reason for rejecting the Appellants' resolution plan, once duly approved by the Committee of Creditors with an overwhelming majority of 98.15%.

16. The Ld. NCLT rather had merely accepted a statement of Respondent No. 2/SBI to permit withdrawal of consent. It ignored its earlier Order dated 19.12.2023, whereby it had directed Respondent No. 2 to file a "formal application" to bring on record the fact the Bank of India and Union Bank of India, had also withdrawn their consent.

17. The impugned order shows the Ld. NCLT did not adjudicate upon allegations of fraud made by the Respondent No. 2/SBI against the Appellants and gave no notice to the appellants and further no reasons are given by the Ld. NCLT to send the Corporate Debtor to liquidation. Further certain issues *viz.* **(a)** Whether liquidation could have been ordered by Ld. Adjudicating Authority at the instance of Financial Creditor, without any formal application by the Resolution Professional and/or without an approval by the Committee of Creditors; and **(b)** Whether the Financial Creditor can withdraw its consent given to Resolution Plan, pending its approval by the Ld. Adjudicating Authority; The Law discussed in *EBIX Singapore Pvt Ltd Vs. Committee of Creditors of Educomp Solutions and others* 2022(2) SCC 401; *Express Resorts and Hotels Ltd Vs Amit Jain and others* 2023 SCC Online NCLAT 97; *Deccan Value Investors LP and Another Vs Dinkar Venkatasubranian and Another* 2024 SCC OnLine SC 4075 was never discussed or adjudicated upon by Ld. Adjudicating Authority.

18. Considering above, we set aside the impugned order and remand the matter to the Ld. Adjudicating Authority to look into the issues above and to decide the matter afresh through a reasoned order. The Ld. NCLT to take an independent view, uninfluenced by our comments. The petition be decided expeditiously, preferably within 8 weeks of the appearances before the Ld. NCLT. Both the appeals i.e. Company Appeal (AT)(Ins) No.183 of 2024 and Company Appeal (AT)(Ins) No.446 of 2024 are disposed of accordingly. All pending applications, if any, are disposed of. No order as to cost.

(Justice Yogesh Khanna)
Member (Judicial)

(Mr. Ajai Das Mehrotra)
Member (Technical)

Dated :06-5-2025
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